

## CHAPTER XIII

Gascony, threatened England with an invasion; and by a sudden attempt, his troops took and burnt Dover,<sup>q</sup> but were obliged soon after to retire. And in order to make a greater diversion of the English force, and engage Edward in dangerous and important wars, he formed a secret alliance with John Baliol, king of Scotland; the commencement of that strict union, which, during so many centuries, was maintained, by mutual interests and necessities, between the French and Scottish nations. John confirmed this alliance by stipulating a marriage between his eldest son and the daughter of Charles de Valois.<sup>r</sup>

The expences attending these multiplied wars of Edward, and his preparations for war, joined to alterations which had insensibly taken place in the general state of affairs, obliged him to have frequent recourse to parliamentary supplies, introduced the lower orders of the state into the public councils, and laid the foundations of great and important changes in the government.

*Digression concerning the constitution of parliament.*

Though nothing could be worse calculated for cultivating the arts of peace or maintaining peace itself, than the long subordination of vassalage from the king to the meanest gentleman, and the consequent slavery of the lower people, evils inseparable from the feudal system; that system was never able to fix the state in a proper warlike posture, or give it the full exertion of its power for defence, and still less for offence, against a public enemy. The military tenants, unacquainted with obedience, unexperienced in war, held a rank in the troops by their birth, not by their merits or services; composed a disorderly and consequently a feeble army; and during the few days, which they were obliged by their tenures to remain in the field, were often more formidable to their own prince than to foreign powers, against whom they were assembled. The sovereigns came gradually to disuse this cumbersome and dangerous machine, so apt to recoil upon the hand which held it; and exchanging the military service for pecuniary supplies, enlisted forces by means of a contract with particular officers, (such as those the Italians denominate *Condottieri*) whom they dismissed at the end of the war.<sup>s</sup> The barons and knights themselves often entered into these engagements with the prince; and were enabled

<sup>q</sup> Trivet, p. 284. Chron. Dunst. vol. ii. p. 642.    <sup>r</sup> Rymer, vol. ii. p. 680, 681, 695, 697. Heming. vol. i. p. 76. Trivet, p. 285.    <sup>s</sup> Cotton's Abr. p. 11.

## HISTORY OF ENGLAND

to fill their bands, both by the authority which they possessed over their vassals and tenants, and from the great numbers of loose, disorderly people, whom they found on their estates, and who willingly embraced an opportunity of gratifying their appetite for war and rapine.

Mean-while, the old Gothic fabric, being neglected, went gradually to decay. Though the Conqueror had divided all the lands of England into sixty thousand knights' fees, the number of these was insensibly diminished by various artifices; and the king at last found, that, by putting the law in execution, he could assemble a small part only of the ancient force of the kingdom. It was a usual expedient for men, who held of the king or great barons by military tenure, to transfer their land to the church, and receive it back by another tenure called *frankalmoigne*, by which they were not bound to perform any service.<sup>t</sup> A law was made against this practice; but the abuse had probably gone far before it was attended to, and probably was not entirely corrected by the new statute, which, like most laws of that age, we may conjecture to have been but feebly executed by the magistrate against the perpetual interest of so many individuals. The constable and mareschal, when they mustered the armies, often, in a hurry, and for want of better information, received the service of a baron for fewer knights' fees, than were due by him; and one precedent of this kind was held good against the king, and became ever after a reason for diminishing the service.<sup>u</sup> The rolls of knights' fees were inaccurately kept; no care was taken to correct them before the armies were summoned into the field;<sup>w</sup> it was then too late to think of examining records and charters; and the service was accepted on the footing which the vassal himself was pleased to acknowledge, after all the various subdivisions and conjunctions of property had thrown an obscurity on the nature and extent of his tenure.<sup>x</sup> It is easy to judge of the intricacies which would attend disputes of this kind with individuals; when even the number of military fees, belonging to the church, whose property was fixed and unalienable, became the subject of controversy; and we find in partic-

<sup>t</sup> Madox's *Baronia Anglica*, p. 114.    <sup>u</sup> Madox's *Baronia Anglica*, p. 115.

<sup>w</sup> We hear only of one king, Henry II. who took this pains; and the record, called *Liber niger Scaccarii*, was the result of it.    <sup>x</sup> Madox, *Bar. Ang.* p. 116.



## CHAPTER XIII

ular, that, when the bishop of Durham was charged with seventy knights' fees for the aid levied on occasion of the marriage of Henry II.'s daughter to the duke of Saxony, the prelate acknowledged ten, and disowned the other sixty.<sup>y</sup> It is not known in what manner this difference was terminated; but had the question been concerning an armament to defend the kingdom, the bishop's service would probably have been received without opposition for ten fees; and this rate must also have fixed all his future payments. Pecuniary scutages, therefore, diminished as much as military services:<sup>z</sup> Other methods of filling the exchequer as well as the armies must be devised: New situations produced new laws and institutions: And the great alterations in the finances and military power of the crown, as well as in private property, were the source of equal innovations in every part of the legislature or civil government.

The exorbitant estates, conferred by the Norman on his barons and chieftains, remained not long entire and unimpaired. The landed property was gradually shared out into more hands; and those immense baronies were divided, either by provisions to younger children, by partitions among co-heirs, by sale, or by escheating to the king, who gratified a great number of his courtiers, by dealing them out among them in smaller portions. Such moderate estates, as they required economy, and confined the proprietors to live at home, were better calculated for duration; and the order of knights and small barons grew daily more numerous, and began to form a very respectable rank or order in the state. As they were all immediate vassals of the crown by military tenure, they were, by the principles of the feudal law, equally intitled with the greatest barons to a seat in the national or general councils; and this right, though regarded as a privilege, which the owners would not entirely relinquish, was also considered as a burthen, which they desired to be subjected to on extraordinary

<sup>y</sup> Ibid. p. 122. Hist. of Exch. p. 404.    <sup>z</sup> In order to pay the sum of 100,000 marks, as king Richard's ransom, twenty shillings were imposed on each knight's fee. Had the fees remained on the original footing, as settled by the Conqueror, this scutage would have amounted to 90,000 marks, which was nearly the sum required: But we find, that other grievous taxes were imposed to complete it: A certain proof, that many frauds and abuses had prevailed in the roll of knights' fees.

## HISTORY OF ENGLAND

occasions only. Hence it was provided in the charter of king John, that, while the great barons were summoned to the national council by a particular writ, the small barons, under which appellation the knights were also comprehended, should only be called by a general summons of the sheriff. The distinction between great and small barons, like that between rich and poor, was not exactly defined; but, agreeably to the inaccurate genius of that age and to the simplicity of ancient government, was left very much to be determined by the discretion of the king and his ministers. It was usual for the prince to require, by a particular summons, the attendance of a baron in one parliament, and to neglect him in future parliaments;<sup>a</sup> nor was this uncertainty ever complained of as an injury. He attended when required: He was better pleased on other occasions to be exempted from the burthen: And as he was acknowledged to be of the same order with the greatest barons, it gave them no surprize to see him take his seat in the great council, whether he appeared of his own accord, or by a particular summons from the king. The barons by *Writ*, therefore, began gradually to intermix themselves with the barons by *Tenure*; and, as Camden tells us,<sup>b</sup> from an ancient manuscript, now lost, that, after the battle of Evesham, a positive law was enacted, prohibiting every baron from appearing in parliament, who was not invited thither by a particular summons, the whole baronage of England held thenceforward their seat by writ, and this important privilege of their tenures was in effect abolished. Only, where writs had been regularly continued for some time in one great family, the omission of them would have been regarded as an affront, and even as an injury.

A like alteration gradually took place in the order of earls, who were the highest rank of barons. The dignity of an earl, like that of a baron, was anciently territorial and official:<sup>c</sup> He exercised jurisdiction within his county: He levied the third of the fines to his own profit: He was at once a civil and a military magistrate: And though his authority, from the time of the Norman conquest, was hereditary in England, the title was so much connected with the office, that, where the king intended to create a new earl, he had

<sup>a</sup> Chancellor West's enquiry into the manner of creating peers, p. 43, 46, 47, 55. <sup>b</sup> In *Britann.* p. 122. <sup>c</sup> *Spellm. Gloss.* in voce *Comes*.



## CHAPTER XIII

no other expedient than to erect a certain territory into a county or earldom, and to bestow it upon the person and his family.<sup>d</sup> But as the sheriffs, who were the vice-gerents of the earls, were named by the king, and removeable at pleasure, he found them more dependant upon him; and endeavoured to throw the whole authority and jurisdiction of the office into their hands. This magistrate was at the head of the finances, and levied all the king's rents within the county. He assessed at pleasure the talliages of the inhabitants in royal demesne: He had usually committed to him the management of wards and often of escheats: He presided in the lower courts of judicature: And thus, though inferior to the earl in dignity, he was soon considered, by this union of the judicial and fiscal powers, and by the confidence reposed in him by the king, as much superior to him in authority, and undermined his influence within his own jurisdiction.<sup>e</sup> It became usual, in creating an earl, to give him a fixed salary, commonly about twenty pounds a year, in lieu of his third of the fines: The diminution of his power kept pace with the retrenchment of his profit: And the dignity of earl, instead of being territorial and official, dwindled into personal and titular. Such were the mighty alterations, which already had fully taken place, or were gradually advancing, in the house of peers; that is, in the parliament: For there seems anciently to have been no other house.

But though the introduction of barons by writ, and of titular earls, had given some encrease to royal authority; there were other causes, which counterbalanced those innovations, and tended in a higher degree to diminish the power of the sovereign. The disuse, into which the feudal militia had in a great measure fallen, made the barons almost entirely forget their dependence on the crown: By the diminution of the number of knights fees, the king had no reasonable compensation when he levied scutages and exchanged their service for money: The alienations of the crown lands had reduced him to poverty: And above all, the concession of the Great Charter had set bounds to royal power, and had rendered it more difficult and dangerous for the prince to exert any extraordinary

<sup>d</sup> Essays on British antiquities. This practice, however, seems to have been more familiar in Scotland and the kingdoms on the continent, than in England. <sup>e</sup> There are instances of princes of the blood who accepted of the office of sheriff. Spellman in voce *Viccomes*.

## HISTORY OF ENGLAND

act of arbitrary authority. In this situation it was natural for the king to court the friendship of the lesser barons and knights, whose influence was no ways dangerous to him, and who, being exposed to oppression from their powerful neighbours, sought a legal protection under the shadow of the throne. He desired, therefore, to have their presence in parliament, where they served to controul the turbulent resolutions of the great. To exact a regular attendance of the whole body would have produced confusion, and would have imposed too heavy a burden upon them. To summon only a few by writ, though it was practised and had a good effect, served not entirely the king's purpose; because these members had no farther authority than attended their personal character, and were eclipsed by the appearance of the more powerful nobility. He therefore dispensed with the attendance of most of the lesser barons in parliament; and in return for this indulgence (for such it was then esteemed) required them to chuse in each county a certain number of their own body, whose charges they bore, and who, having gained the confidence, carried with them, of course, the authority, of the whole order. This expedient had been practised at different times, in the reign of Henry III.<sup>f</sup> and regularly, during that of the present king. The numbers sent up by each county varied at the will of the prince:<sup>g</sup> They took their seat among the other peers; because by their tenure they belonged to that order:<sup>h</sup> The introducing of them into that house scarcely appeared an innovation: And though it was easily in the king's power, by varying their number, to command the resolutions of the whole parliament, this circumstance was little attended to, in an age when force was more prevalent than laws, and when a resolution, though taken by the majority of a legal assembly, could not be executed, if it opposed the will of the more powerful minority.

But there were other important consequences, which followed the diminution and consequent disuse of the ancient feudal militia. The king's expence, in levying and maintaining a military force for every enterprize, was encreased beyond what his narrow reve-

<sup>f</sup> Rot. Claus. 38. Hen. III. m. 7. and 12 d.: As also Rot. Claus. 42. Hen. III. m. 1. d. Prynne's Pref. to Cotton's Abridgment. <sup>g</sup> Brady's answer to Petyt, from the records, p. 151. <sup>h</sup> Brady's Treatise of Boroughs, App. N<sup>o</sup>. 13.



## CHAPTER XIII

nues were able to bear: As the scutages of his military tenants, which were accepted in lieu of their personal service, had fallen to nothing; there were no means of supply but from voluntary aids granted him by the parliament and clergy: Or from the talliages which he might levy upon the towns and inhabitants in royal demesne. In the preceding year, Edward had been obliged to exact no less than the sixth of all moveables from the laity, and a moiety of all ecclesiastical benefices<sup>i</sup> for his expedition into Poictou, and the suppression of the Welsh: And this distressful situation, which was likely often to return upon him and his successors, made him think of a new device, and summon the representatives of all the boroughs to parliament. This period, which is the twenty-third of his reign, seems to be the real and true epoch of the house of commons; and the faint dawn of popular government in England. For the representatives of the counties were only deputies from the smaller barons and lesser nobility: And the former precedent of representatives from the boroughs, who were summoned by the earl of Leicester, was regarded as the act of a violent usurpation, had been discontinued in all the subsequent parliaments, and if such a measure had not become necessary on other accounts, that precedent was more likely to blast than give credit to it.

During the course of several years, the kings of England, in imitation of other European princes, had embraced the salutary policy of encouraging and protecting the lower and more industrious orders of the state; whom they found well disposed to obey the laws and civil magistrate, and whose ingenuity and labour furnished commodities, requisite for the ornament of peace and support of war. Though the inhabitants of the country were still left at the disposal of their imperious lords; many attempts were made to give more security and liberty to citizens, and make them enjoy unmolested the fruits of their industry. Boroughs were erected by royal patent within the demesne lands: Liberty of trade was conferred upon them: The inhabitants were allowed to farm at a fixed rent their own tolls and customs:<sup>k</sup> They were permitted to elect their own magistrates: Justice was administered to them by these magistrates, without obliging them to attend the sheriff or county

<sup>i</sup> Ibid. p. 31. from the records. Heming. vol. i. p. 52. M. West. p. 422. Ryley, p. 462. <sup>k</sup> Madox, *Firma Burgi*, p. 21.

## HISTORY OF ENGLAND

court: And some shadow of independence, by means of these equitable privileges, was gradually acquired by the people.<sup>l</sup> The king, however, retained still the power of levying talliages or taxes upon them at pleasure;<sup>m</sup> and though their poverty and the customs of the age made these demands neither frequent nor exorbitant, such unlimited authority in the sovereign was a sensible check upon commerce, and was utterly incompatible with all the principles of a free government. But when the multiplied necessities of the crown produced a greater avidity for supply, the king, whose prerogative entitled him to exact it, found that he had not power sufficient to enforce his edicts, and that it was necessary, before he imposed taxes, to smooth the way for his demand, and to obtain the previous consent of the boroughs, by solicitations, remonstrances, and authority. The inconvenience of transacting this business with every particular borough was soon felt; and Edward became sensible, that the most expeditious way of obtaining supply, was to assemble the deputies of all the boroughs, to lay before them the necessities of the state, to discuss the matter in their presence, and to require their consent to the demands of their sovereign. For this reason, he issued writs to the sheriffs, enjoining them to send to parliament, along with two knights of the shire, two deputies from each borough within their county,<sup>n</sup> and these provided with sufficient powers from their community, to consent, in their name, to what he and his council should require of them. *As it is a most equitable rule*, says he, in his preamble to this writ, *that what concerns all should be approved of by all; and common dangers be repelled by united efforts*;<sup>o</sup> a noble principle, which may seem to indicate a liberal mind in the king, and which laid the foundation of a free and an equitable government.

<sup>l</sup> Brady of Boroughs, App. N<sup>o</sup>. 1, 2, 3.    <sup>m</sup> The king had not only the power of talliating the inhabitants within his own demesnes, but that of granting to particular barons the power of talliating the inhabitants within theirs. See Brady's answer to Petyt, p. 118. Madox's Hist. of the Exchequer, p. 518.    <sup>n</sup> Writs were issued to about 120 cities and boroughs.    <sup>o</sup> Brady of Boroughs, p. 25, 33, from the records. The writs of the parliament immediately preceding, remain; and the return of knights is there required, but not a word of the boroughs: A demonstration, that this was the very year in which they commenced. In the year immediately preceding, the taxes were levied by a seeming free consent of each particular borough, beginning with London. Id. p. 31, 32, 33, from the records. Also his answer to Petyt, p. 40, 41.



## CHAPTER XIII

After the election of these deputies, by the aldermen and common council, they gave sureties for their attendance before the king and parliament: Their charges were respectively borne by the borough, which sent them: And they had so little idea of appearing as legislators, a character extremely wide of their low rank and condition,<sup>p</sup> that no intelligence could be more disagreeable to any borough, than to find that they must elect, or to any individual than that he was elected, to a trust from which no profit or honour could possibly be derived.<sup>q</sup> They composed not, properly speaking, any essential part of the parliament: They sat apart both from the barons and knights,<sup>r</sup> who disdained to mix with such mean personages: After they had given their consent to the taxes required of them, their business being then finished, they separated, even though the parliament still continued to sit, and to canvass the national business:<sup>s</sup> And as they all consisted of men, who were real burgesses of the place from which they were sent, the sheriff, when he found no person of abilities or wealth sufficient for the office, often used the freedom of omitting particular boroughs in his returns; and as he received the thanks of the people for this indulgence, he gave no displeasure to the court, who levied on all the boroughs, without distinction, the tax agreed to by the majority of deputies.<sup>t</sup>

The union, however, of the representatives from the boroughs gave gradually more weight to the whole order; and it became customary for them, in return for the supplies which they granted, to prefer petitions to the crown for the redress of any particular grievance, of which they found reason to complain. The more the king's demands multiplied, the faster these petitions encreased both in number and authority; and the prince found it difficult to

<sup>p</sup> Reliquia Spellm. p. 64. Prynne's pref. to Cotton's Abridg. and the Abridg. passim. <sup>q</sup> Brady of Boroughs, p. 59, 60. <sup>r</sup> Ibid. p. 37, 38, from the records, and append. p. 19. Also his append. to his answ. to Petyt, Record. And his gloss. in Verb. *Communitas Regn.* p. 33. <sup>s</sup> Ryley's Placit. Parl. p. 241, 242, &c. Cotton's Abridg. p. 14. <sup>t</sup> Brady of Boroughs, p. 52. from the records. There is even an instance in the reign of Edward III. when the king named all the deputies. Id. answ. to Petyt, p. 161. If he fairly named the most considerable and creditable burgesses, little exception would be taken; as their business was not to check the king, but to reason with him, and consent to his demands. It was not till the reign of Richard II. that the sheriffs were deprived of the power of omitting boroughs at pleasure. See Stat. at large, 5th Richard II. cap. 4.

## HISTORY OF ENGLAND

refuse men, whose grants had supported his throne, and to whose assistance he might so soon be again obliged to have recourse. The commons however were still much below the rank of legislators.<sup>u</sup> Their petitions, though they received a verbal assent from the throne, were only the rudiments of laws: The judges were afterwards entrusted with the power of putting them into form: And the king, by adding to them the sanction of his authority, and that sometimes without the assent of the nobles, bestowed validity upon them. The age did not refine so much as to perceive the danger of these irregularities. No man was displeased, that the sovereign, at the desire of any class of men, should issue an order, which appeared only to concern that class; and his predecessors were so near possessing the whole legislative power, that he gave no disgust by assuming it in this seemingly inoffensive manner. But time and farther experience gradually opened men's eyes and corrected these abuses. It was found, that no laws could be fixed for one order of men without affecting the whole; and that the force and efficacy of laws depended entirely on the terms employed in wording them. The house of peers, therefore, the most powerful order in the state, with reason expected, that their assent should be expressly granted to all public ordinances:<sup>w</sup> And in the reign of Henry V. the commons required, that no laws should be framed merely upon their petitions, unless the statutes were worded by themselves, and had passed their house in the form of a bill.<sup>x</sup>

But as the same causes, which had produced a partition of property, continued still to operate; the number of knights and lesser barons, or what the English call the gentry, perpetually encreased, and they sunk into a rank still more inferior to the great nobility. The equality of tenure was lost in the great inferiority of power and property; and the house of representatives from the counties was gradually separated from that of the peers, and formed a distinct order in the state.<sup>y</sup> The growth of commerce,

<sup>u</sup> See note [D] at the end of the volume. <sup>w</sup> In those instances found in Cotton's abridgement, where the king appears to answer of himself the petitions of the commons, he probably exerted no more than that power, which was long inherent in the crown, of regulating matters by royal edicts or proclamations. But no durable or general statute seems ever to have been made by the king from the petition of the commons alone, without the assent of the peers. It is more likely that the peers alone, without the commons, would enact statutes. <sup>x</sup> Brady's answ. to Petyt, p. 85. from the records. <sup>y</sup> Cotton's abridgement, p. 13.



## CHAPTER XIII

meanwhile, augmented the private wealth and consideration of the burgesses; the frequent demands of the crown encreased their public importance; and as they resembled the knights of shires in one material circumstance, that of representing particular bodies of men; it no longer appeared unsuitable to unite them together in the same house, and to confound their rights and privileges.<sup>z</sup> Thus the third estate, that of the commons, reached at last its present form; and as the country gentlemen made thenceforwards no scruple of appearing as deputies from the boroughs, the distinction between the members was entirely lost, and the lower house acquired thence a great accession of weight and importance in the kingdom. Still, however, the office of this estate was very different from that which it has since exercised with so much advantage to the public. Instead of checking and controuling the authority of the king, they were naturally induced to adhere to him, as the great fountain of law and justice, and to support him against the power of the aristocracy, which at once was the source of oppression to themselves, and disturbed him in the execution of the laws. The king, in his turn, gave countenance to an order of men, so useful and so little dangerous: The peers also were obliged to pay them some consideration: And by this means, the third estate, formerly so abject in England, as well as in all other European nations, rose by slow degrees to their present importance; and in their progress made arts and commerce, the necessary attendants of liberty and equality, flourish in the kingdom.<sup>a</sup>

What sufficiently proves, that the commencement of the house of burgesses, who are the true commons, was not an affair of chance, but arose from the necessities of the present situation, is, that Edward, at the very same time, summoned deputies from the inferior clergy, the first that ever met in England,<sup>b</sup> and he required them to impose taxes on their constituents for the public service. Formerly the ecclesiastical benefices bore no part of the burthens of the state: The pope indeed of late had often levied impositions upon them: He had sometimes granted this power to the sovereign:<sup>c</sup> The king himself had in the preceding year exacted, by menaces and violence, a very grievous tax of half the revenues of

<sup>z</sup> See note [E] at the end of the volume.    <sup>a</sup> See note [F] at the end of the volume.    <sup>b</sup> Archbishop Wake's *State of the church of England*, p. 235. Brady of Boroughs, p. 34. Gilbert's *Hist. of the Exch.* p. 46.    <sup>c</sup> *Ann. Waverl.* p. 227, 228. T. Wykes, p. 99, 120.

## HISTORY OF ENGLAND

the clergy: But as this precedent was dangerous, and could not easily be repeated in a government which required the consent of the subject to any extraordinary resolution, Edward found it more prudent to assemble a lower house of convocation, to lay before them his necessities, and to ask some supply. But on this occasion he met with difficulties. Whether that the clergy thought themselves the most independant body in the kingdom, or were disgusted by the former exorbitant impositions, they absolutely refused their assent to the king's demand of a fifth of their moveables, and it was not till a second meeting, that, on their persisting in this refusal, he was willing to accept of a tenth. The barons and knights granted him, without hesitation, an eleventh; the burgesses, a seventh. But the clergy still scrupled to meet on the king's writ; lest by such an instance of obedience they should seem to acknowledge the authority of the temporal power: And this compromise was at last fallen upon, that the king should issue his writ to the archbishop; and that the archbishop should, in consequence of it, summon the clergy, who, as they then appeared to obey their spiritual superior, no longer hesitated to meet in convocation. This expedient, however, was the cause, why the ecclesiastics were separated into two houses of convocation, under their several archbishops, and formed not one estate, as in other countries of Europe; which was at first the king's intention.<sup>d</sup> We now return to the course of our narration.

1296.

Edward, conscious of the reasons of disgust which he had given to the king of Scots, informed of the dispositions of that people, and expecting the most violent effects of their resentment, which he knew he had so well merited; employed the supplies, granted him by his people, in making preparations against the hostilities of his northern neighbour. When in this situation, he received intelligence of the treaty secretly concluded between John and Philip; and though uneasy at this concurrence of a French and Scottish war, he resolved not to encourage his enemies by a pusillanimous behaviour, or by yielding to their united efforts. He summoned John to perform the duty of a vassal, and to send him a supply of forces against an invasion from France, with which he was then threatened: He next required, that the fortresses of Berwic, Jedbor-

<sup>d</sup> Gilbert's Hist. of Exch. p. 51, 54.



NOTE [D], p. 108

Throughout the reign of Edw. I. the assent of the commons is not once expressed in any of the enacting clauses; nor in the reigns ensuing, till the 9 Edw. III. nor in any of the enacting clauses of 16 Rich. II. Nay even so low as Hen. VI. from the beginning till the 8th of his reign, the assent of the commons is not once expressed in any enacting clause. See preface to Ruffhead's edit. of the Statutes, p. 7. If it should be asserted, that the commons had really given their assent to these statutes, though they are not expressly mentioned; this very omission, proceeding, if you will, from carelessness, is a proof how little they were respected. The commons were so little accustomed to transact public business, that they had no speaker, till after the parliament 6th Edw. III. See Prynne's preface to Cotton's abridg. Not till the first of Richard II. in the opinion of most antiquaries. The commons were very unwilling to meddle in any state affairs, and commonly either referred themselves to the lords, or desired a select committee of that house to assist them, as appears from Cotton. 5 E. III. n. 5; 15 E. III. n. 17; 21 E. III. n. 5; 47 E. III. n. 5; 50 E. III. n. 10; 51 E. III. n. 18; 1 R. II. n. 12; 2 R. II. n. 12; 5 R. II. n. 14, 2 parl. 6 R. II. n. 14; parl. 2. 6 R. II. n. 8. &c.

NOTE [E], p. 109

It was very agreeable to the maxims of all the feudal governments, that every order of the state should give their consent to the acts which more immediately concerned them; and as the notion of a political system was not then so well understood, the other orders of the state were often not consulted on these occasions. In this reign, even the merchants, though no

## HISTORY OF ENGLAND

public body, granted the king impositions on merchandize, because the first payments came out of their pockets. They did the same in the reign of Edward III. but the commons had then observed that the people paid these duties, though the merchants advanced them; and they therefore remonstrated against this practice. Cotton's abridg. p. 39. The taxes imposed by the knights on the counties were always lighter than those which the burgesses laid on the boroughs; a presumption, that in voting those taxes, the knights and burgesses did not form the same house. See Chancellor West's enquiry into the manner of creating peers, p. 8. But there are so many proofs, that those two orders of representatives were long separate, that it is needless to insist on them. Mr. Carte, who had carefully consulted the rolls of parliament, affirms, that they never appear to have been united till the 16th of Edward III. See Hist. vol. ii. p. 451. But it is certain that this union was not even then final: In 1372, the burgesses acted by themselves, and voted a tax after the knights were dismissed. See Tyrrel, Hist. vol. iii. p. 734. from Rot. Claus. 46 Edw. III. n. 9. In 1376, they were the knights alone, who passed a vote for the removal of Alice Pierce from the king's person, if we may credit Walsingham, p. 189. There is an instance of a like kind in the reign of Richard II. Cotton, p. 193. The different taxes voted by those two branches of the lower house, naturally kept them separate: But as their petitions had mostly the same object, namely, the redress of grievances, and the support of law and justice both against the crown and the barons, this cause as naturally united them, and was the reason why they at last joined in one house for the dispatch of business. The barons had few petitions. Their privileges were of more ancient date: Grievances seldom affected them: They were themselves the chief oppressors. In 1333, the knights by themselves concurred with the bishops and barons in advising the king to stay his journey into Ireland. Here was a petition which regarded a matter of state, and was supposed to be above the capacity of the burgesses. The knights, therefore, acted apart in this petition. See Cotton, abridg. p. 13. Chief baron Gilbert thinks, that the reason why taxes always began with the commons or burgesses was, that they were limited by the instructions of their boroughs. See Hist. of the Exchequer, p. 37.

## NOTE [F], p. 109

The chief argument from ancient authority, for the opinion that the representatives of boroughs preceded the forty-ninth of Henry III. is the famous petition of the borough of St. Albans, first taken notice of by Selden, and then by Peyt, Brady, Tyrrel, and others. In this petition, presented to the parliament in the reign of Edward II. the town of St. Albans asserts, that though they held *in capite* of the crown, and owed only, for all other service, their attendance in parliament, yet the sheriff had omitted them in his writs; whereas both in the reign of the king's father, and all his predecessors, they had always sent members. Now, say the defenders of this opinion, if the commencement of the house of commons



## NOTES TO THE SECOND VOLUME

were in Henry III.'s reign, this expression could not have been used. But Madox, in his *History of the Exchequer*, p. 522, 523, 524, has endeavoured, and with great reason, to destroy the authority of this petition for the purpose alleged. He asserts, first, that there was no such tenure in England as that of holding by attendance in parliament, instead of all other service. Secondly, That the borough of St. Albans never held of the crown at all, but was always demesne land of the abbot. It is no wonder, therefore, that a petition which advances two falsehoods, should contain one historical mistake, which indeed amounts only to an inaccurate and exaggerated expression; no strange matter in ignorant Burgesses of that age. Accordingly St. Albans continued still to belong to the abbot. It never held of the crown, till after the dissolution of the monasteries. But the assurance of these petitioners is remarkable. They wanted to shake off the authority of their abbot, and to hold of the king; but were unwilling to pay any services even to the crown: Upon which they framed this idle petition, which later writers have made the foundation of so many inferences and conclusions. From the tenor of the petition it appears, that there was a close connection between holding of the crown, and being represented in parliament: The latter had scarcely ever place without the former: Yet we learn from Tyrrel's *Append.* vol. iv. that there were some instances to the contrary. It is not improbable, that Edward followed the roll of the earl of Leicester, who had summoned, without distinction, all the considerable boroughs of the kingdom; among which there might be some few that did not hold of the crown. Edward also found it necessary to impose taxes on all the boroughs in the kingdom without distinction. This was a good expedient for augmenting his revenue. We are not to imagine, because the house of commons have since become of great importance, that the first summoning of them would form any remarkable and striking epoch, and be generally known to the people even seventy or eighty years after. So ignorant were the generality of men in that age, that country burgesses would readily imagine an innovation, seemingly so little material, to have existed from time immemorial, because it was beyond their own memory, and perhaps that of their fathers. Even the parliament in the reign of Henry V. say, that Ireland had, from the beginning of time, been subject to the crown of England. (See Brady.) And surely, if any thing interests the people above all others, it is war and conquests, with their dates and circumstances.